

**MINUTES  
of the  
SIXTH MEETING IN 2012  
of the  
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**November 21, 2012  
Room 322, State Capitol  
Santa Fe**

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for 2012 was called to order by Representative Edward C. Sandoval, chair, on Wednesday, November 21, 2012, at 9:11 a.m. in Room 322 of the State Capitol in Santa Fe.

**Present**

Rep. Edward C. Sandoval, Chair  
Sen. Mark Boitano  
Sen. Carlos R. Cisneros  
Rep. Anna M. Crook  
Sen. Timothy M. Keller  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Howie C. Morales  
Rep. Jim R. Trujillo  
Sen. Pat Woods

**Absent**

Sen. Tim Eichenberg, Vice Chair  
Rep. Donald E. Bratton  
Sen. Timothy Z. Jennings, Senate President  
Pro Tempore  
Sen. Gay G. Kernan  
Rep. Ben Lujan, Speaker of the House  
Rep. Henry Kiki Saavedra  
Sen. John Arthur Smith  
Rep. Thomas C. Taylor  
Rep. Bob Wooley

**Designees**

Rep. Ray Begaye (attending as a guest)  
Rep. Ernest H. Chavez  
Sen. Phil A. Griego  
Sen. Nancy Rodriguez  
Sen. William E. Sharer  
Rep. James R.J. Strickler  
Rep. Don L. Tripp  
Rep. Luciano "Lucky" Varela  
Sen. Peter Wirth

Sen. Rod Adair  
Sen. William F. Burt  
Rep. Zachary J. Cook  
Rep. Brian F. Egolf, Jr.  
Rep. Miguel P. Garcia  
Rep. Thomas A. Garcia  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Eric G. Griego  
Rep. Sandra D. Jeff  
Rep. Antonio Lujan  
Rep. Antonio "Moe" Maestas  
Sen. George K. Munoz  
Sen. Steven P. Neville  
Rep. Debbie A. Rodella  
Sen. Bernadette M. Sanchez  
Sen. John M. Sapien

**Guest Legislators**

Rep. Dennis J. Roch

Rep. Conrad D. James

**Staff**

Pam Ray, Staff Attorney, Legislative Council Service (LCS)

Ric Gaudet, LCS

Damian Lara, Staff Attorney, LCS

Pam Stokes, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, November 21****Durable Medical Equipment Gross Receipts Tax (GRT) Deduction**

Richard Minzner, lobbyist, presented proposed legislation for the committee's consideration to provide a deduction from gross receipts for sales or rentals of durable medical equipment and medical supplies. This bill did not make its way through the legislature in the 2012 legislative session, partially because the fiscal impact report (FIR) inaccurately claimed up to \$12 million in forgone revenue. A new FIR estimates the cost to the state at \$1 million annually. Mr. Minzner said that 18 durable medical providers have gone out of business in the past three years. Declining reimbursements from the Medicare program have made it difficult for these local businesses to survive, and the GRT deduction will help.

Questions and comments from committee members included the following.

- The original bill from the 2012 legislative session did not include the rental of equipment. Mr. Minzner said that rentals were added during the committee amendment process. Rentals of durable medical equipment are a sizable portion of the industry.

**Property Tax Valuation Limit Proposal**

Clyde Ward, chair, Assessors Affiliate, New Mexico Association of Counties (NMAC), William Campbell, chair, Property Tax Task Force, Realtors Association of New Mexico (RANM), and Gary Perez, deputy assessor, Santa Fe County, presented a proposal for the committee's consideration to solve the property tax valuation problem that has plagued some counties for more than a decade. New Mexico law was changed in 2001 to require that some residential property values could not be increased by more than three percent per year, in an attempt to protect long-term property owners from steep increases in property taxes. Problems with the valuation cap began soon after the law took effect because the property valuation

limitation did not apply to properties that are sold. Those properties were valued at their current and correct value. Within a few years, valuations of recently sold properties were sometimes 50 percent higher than similarly situated properties. An appeals court decision struck down this "tax lightning" portion of the law, and multiple attempts to remedy the situation since then have not been successful.

A large group of interested parties convened a group to solve the property tax lightning problem. The proposal presented to the committee has received the endorsement of the RANM and the Assessors Affiliate of the NMAC. The legislation would bring all residential property valuations to no less than 90 percent of their current and correct values. For primary residences that have been owned for more than 10 years, the value of the properties would not exceed 90 percent of that value (81 percent of the current and correct value). The valuation of properties whose owners have occupied the residences for more than 20 years and who are more than 65 years of age would not exceed 80 percent of the 90 percent valuation (72 percent of the current and correct value). Although some property owners would have a higher valuation than they currently enjoy, mill levies would tend to be reduced as a result of the yield control provisions of the Property Tax Code.

Questions and comments from committee members included the following.

- What would happen to the valuation of a property in which a home on the property reverts back to the parents after their child dies? Mr. Ward said that the proposed legislation does not address family portability of valuations. Mr. Campbell said that once the legislation is passed, that issue could easily be addressed as part of a person's estate planning.
- How many properties are valued at 80 percent of current and correct value? Mr. Ward estimated that one-third of residential properties in some counties are valued at less than 80 percent. Those properties that are valued at 40 percent of current and correct value will never reach 80 percent valuation under current law.
- If property valuations go up, some mill levies will decrease, but operational mill levies are not affected by yield control statutes.
- A property owner with a current valuation of 40 percent of current and correct value will face a massive property tax increase if that person's valuation increases to 81 percent of current and correct value in one year. Mr. Campbell said that if property values increase 20 percent, the mill rate will go down correspondingly. The actual taxes property owners pay should not increase very much.
- What authority does the legislature have to treat single-family homes differently than multifamily homes? Mr. Ward said that the Constitution of New Mexico allows property tax differentials based on age, income and owner-occupancy only.

- The proposed bill seems to equalize the property tax bills of new homeowners at the expense of long-term homeowners. This legislation will be a hard sell for many legislators.

### **County Legislative Priorities**

Paul Gutierrez, executive director, NMAC, presented two proposed bills for the committee's consideration. The first proposal would require disclosure to county assessors of the sales price of all real property in the county. Current law requires disclosure of the sales price of residential property. The new law would include vacant land and commercial property in that requirement. Information provided to the county assessor would continue to be confidential and would be used by the assessor to better calculate property values.

The second bill would require the Taxation and Revenue Department (TRD) to hold at least one delinquent property sale in each county each year.

Questions and comments from committee members included the following.

- How would the sales price disclosure work toward improving property valuations for properties that are sold at inflated prices? For example, many properties are sold through real estate contracts at much higher actual prices than they are worth. Mr. Ward said that the sales price information is just one factor in determining property values.

### **Regional Transit Authority Tax Revenue Distribution**

Tony Mortillaro, executive director, North Central Regional Transit District, and Scott Scanland, lobbyist, presented proposed legislation for the committee's consideration that would provide a direct distribution of GRT revenue imposed by counties for the benefit of the district. Currently, the state distributes county regional GRT revenue to the county that imposed the tax, which then forwards that revenue to the district.

Questions and comments from committee members included the following.

- What happens to interest income during the collection and distribution period? Mr. Mortillaro said that whichever entity has the cash gets to keep the interest. He said that he would prefer that the regional transit district get the distribution directly, which would allow it to keep any interest generated.

### **Manufacturing Consumables Deduction: Implementation and Legislative Changes**

John Tysseling, chief economist, TRD, presented proposed legislation for the committee's consideration that would allow a person who is not the liable taxpayer of GRT to pay the tax due on behalf of another person. The bill is envisioned as a solution to the problem created for utility companies after the enactment in 2012 of a deduction from gross receipts from the sale of items consumed in a manufacturing process. Utility companies had expressed concern over the requirement that they would need to develop separate billing systems for manufacturing customers in order for the deduction to be claimed. Since the beneficiary of the deduction is

actually the manufacturer, the legislation would allow the manufacturer to allocate that portion of its utility bill that is not eligible for the deduction, and then pay the GRT due on behalf of the seller of the utility. The bill also removes the reporting requirement that the TRD provide aggregated data to the legislature about the use of the deduction.

Questions and comments from committee members included the following.

- Why is this legislation needed? Mr. Tysseling said that utility companies would have been forced to make extensive modifications to their billing systems. It was decided to shift this burden to manufacturers claiming the deduction.

- Does new legislation need to be enacted allowing proxy methods of measuring consumables by small manufacturers? Mr. Tysseling said that the TRD may need to develop alternative methods of measuring consumables, but that it is not ready to adopt any rules yet. New legislation would probably not be necessary.

### **Legislation Proposals of Senator Keller**

Senator Keller presented three proposed bills for the committee's consideration, including:

- a bill, already endorsed by the Science, Technology and Telecommunications Committee, to provide a deduction from gross receipts of sales to a person engaged in technology transfer during the first three years of the buyer's business operations;

- a bill, already endorsed by the Science, Technology and Telecommunications Committee, to provide a credit to be taken against GRT due equal to 50 percent of contributions made to endowment funds of post-secondary educational institutions that promote the commercialization of licensed technology conceived at the institutions; and

- a bill to clarify and strengthen provisions of the high-wage jobs tax credit. The bill differs from the Economic Development Department's (EDD) proposal by requiring reporting of the credit to the legislature; increasing the wage threshold required to qualify for the credit; keeping the 50 percent export requirement for businesses to qualify for the credit; and providing a \$25 million annual cap on allowable credits.

### **Special Fuel Excise Tax Deduction for Sales of Biodiesel**

Ruben Baca, New Mexico Petroleum Marketers Association, and Richard Anklam, president and executive director, New Mexico Tax Research Institute (NMTRI), presented proposed legislation for the committee's consideration to eliminate the double taxation currently imposed on the sale of biodiesel. Usually, diesel fuel is delivered through a pipeline to a rack terminal. That fuel is not taxable until it is loaded into tanker trucks or rail cars destined for sale in the state. However, biodiesel is usually trucked into the state, mixed with regular diesel at the rack terminal and then reloaded into tanker trucks or rail cars for resale. The biodiesel is taxed when it arrives at the rack terminal and is taxed again after it is blended and reloaded. The

legislation would allow amounts of biodiesel received at the rack terminal to be deducted from the total amount of special fuel to be taxed. The blended biodiesel would then be taxed when it leaves the rack terminal to be sold.

### **EDD Proposals**

Wade Jackson, general counsel, EDD, presented three proposed bills for the committee's consideration relating to economic development initiatives in New Mexico. The first proposal is a result of the work done in October by the New Century Economy Summit, which was attended by businesspeople, economic development specialists, university faculty, government officials, organized labor representatives and the general public. The bill would reduce the top corporate income tax (CIT) rate from 7.6 percent to 4.9 percent. According to a recent Ernst & Young study, New Mexico has the highest tax burden on new business investment in the country. A 2012 Tax Foundation study ranked the state thirty-eighth in its Business Tax Climate Index. Many states, according to that study, use a gross receipts tax in lieu of a CIT, but New Mexico has both taxes. CIT rates are very likely the single largest determinant of economic growth.

The second proposal from the EDD would allow multistate corporations to use a single sales factor (SSF) in computing CIT due. Current law generally requires corporations to calculate the CIT by equally weighting property, payroll and sales in the state compared to those same factors of the company nationwide. This formula has the consequence of taxing new investment. If a company builds a new facility and hires more employees in New Mexico, its CIT will increase. Moving to an SSF methodology will encourage investment and hiring in the state.

The third proposal would reform provisions of the high-wage jobs tax credit to eliminate loopholes and tighten the eligibility for the credit. The costs to the state of the credit have increased dramatically in the past two fiscal years because companies have been exploiting loopholes in the law. The bill would not allow a credit for mergers that did not create any net new jobs; limit credit claims to one year after the job was created; close the government contractor loophole; use wages and benefits to determine the threshold for the credit; define "wages" and "benefits" with more clarity; and extend the sunset date of the credit to 2020.

Questions and comments from committee members included the following.

- The original Ernst & Young study that claimed New Mexico had the highest tax burden was not accurate. A new study performed by that company and the NMTRI determined that New Mexico had an average tax burden on business investment.
- Although businesses can take advantage of some incentives to reduce their effective tax rate, small businesses would have to spend a significant percentage of their revenue in order to get those incentives. Reducing the CIT rate would be a much simpler and fairer method of improving the business climate.

- The EDD proposal for an SSF does not include mandatory combined reporting. Mr. Jackson said that combined reporting could be on the negotiating table.
- Which industries would be penalized from an SSF? Mr. Jackson said that the SSF would be an option, so nobody would lose from the law change. Retail stores would probably choose to use the traditional three-factor formula in computing the CIT.
- EDD and LCS staff were asked to provide the committee with per capita income figures for the surrounding states in order to understand how the SSF and CIT rate changes will impact incomes.
- In order to lower the CIT rate and provide an SSF, the state needs to broaden the CIT base and eliminate certain "corporate welfare" incentives in statute.
- Small, local retail stores need to be protected. The EDD proposals do not appear to help them in any way. It is not fair that those businesses, which pay income taxes on their profits, must compete with big box stores that use separate reporting loopholes to pay no income taxes in New Mexico.
- Economists always claim that cutting tax rates will spur economic growth. However, when personal income tax rates were slashed in 2004, the state's economy did not grow significantly, and the state lost \$700 million in much-needed revenue.
- Companies will not locate in New Mexico if the state does not have a good educational system. The CIT rate is only one factor in a company's decision to invest in New Mexico.
- When CIT rates increase, benefits and wages tend to decrease. New Mexico needs to incentivize new investment.
- What are the reasons for the differences between Senator Keller's high-wage jobs tax credit reform bill and that of the EDD? Mr. Jackson said that increasing the wage threshold would not change the fiscal impact very much. The purpose of the credit is to encourage employers to hire new employees. With the new reforms, there should not be a need for a cap on the amount of credit annually. If the credit is working (i.e., creating new jobs), then a cap is not needed at all. Finally, the elimination of the 50 percent export requirement is actually not a substantive change, since that mirrors the Job Training Incentive Program (JTIP) eligibility. Any company claiming the credit must be JTIP-eligible, which means the business must be mostly engaged in exporting goods or services.

### **Gross Receipts Deduction for Plug-In Electric Vehicles**

Representative Trujillo and R.E. Thompson, representing General Motors, presented proposed legislation for the committee's consideration to provide a five-year exemption from the motor vehicle excise tax for the purchase of qualified plug-in electric vehicles. The legislation

did not make it all the way through the legislature during the 2012 session, so the company will again try to get it enacted in 2013. The legislation is needed to encourage the growth of the nascent electric car industry. The fiscal impact of the legislation is estimated to be \$120,000 annually.

Questions and comments from committee members included the following.

- Why should the state use its tax code to modify consumer behavior?

### **Tax Preparation Fraud Proposal**

Senator Keller, Shawn Spruce, First Nations Development Institute (FNDI), and Marvin Ginn, FNDI, presented proposed legislation for the committee's consideration to regulate the tax refund anticipation loan (RAL) industry. Mr. Spruce said that RALs tend to have extremely high fees and interest rates. Some RAL centers have abusive practices such as holding personal documents as security against a loan. RAL centers have targeted Native American communities as an easy way of making money. Mr. Ginn said that the Native Community Finance organization has helped many people get out of expensive and onerous RALs. Some individuals have paid more than 50 percent of their refund to pay back their loan. Senator Keller said that RALs are mostly unregulated and that the proposed bill would establish certain requirements for the industry.

### **Committee Proposals**

Ms. Ray and Mr. Lara presented three bill drafts for the committee's consideration, each of which was drafted in an attempt to make them revenue neutral:

- a bill to decrease the top CIT rate from 7.6 percent to 6.4 percent; to require combined reporting of multistate corporations; and to repeal certain business tax incentives;
- a bill to allow multistate corporations to use an SSF in computing their CIT liability; to require combined reporting by those corporations; and to repeal certain business tax incentives; and
- a bill to lower the GRT rate progressively over several years; and to phase out health-care-related deductions, exemptions and credits taken against the GRT.

There being no further business, the committee adjourned at 3:36 p.m.